



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---------------------|-------------|----------------------|---------------------|------------------|
| 10/571,246 | 12/05/2006 | Joachim Rudhard | 10191/4346 | 6203 |
| 26646 | 7590 | 07/09/2009 | EXAMINER | |
| KENYON & KENYON LLP | | | KUSUMAKAR, KAREN M | |
| ONE BROADWAY | | | | |
| NEW YORK, NY 10004 | | | ART UNIT | PAPER NUMBER |
| | | | 2829 | |
| | | | MAIL DATE | DELIVERY MODE |
| | | | 07/09/2009 | PAPER |

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | |
|------------------------------|------------------------|---------------------|
| Office Action Summary | Application No. | Applicant(s) |
| | 10/571,246 | RUDHARD, JOACHIM |
| | Examiner | Art Unit |
| | KAREN M. KUSUMAKAR | 2829 |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 08 May 2009.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 9-11 and 13-18 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 9-11 and 13-18 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO/SB/08)

Paper No(s)/Mail Date _____.

4) Interview Summary (PTO-413)

Paper No(s)/Mail Date. _____.

5) Notice of Informal Patent Application

6) Other: _____.

DETAILED ACTION

Status of Claims

1. As of the amendment filed 5/8/09, no claims have been added, claim 12 has been canceled, and claims 9 and 16 been amended. Therefore, claims 9-11 and 13-18 remain pending, with claims 9 and 16 being independent.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 9-11 and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by *Tillack et al. (Applicant's admitted prior art filed in IDS dated 9/11/08)*.

As to claim 9, Tillack teaches a method for producing at least one of (a) etched holes and (b) etched trenches of a component based on one of (c) silicon and (d) a layered silicon/insulator structure (See abstract), the method comprising: applying at least one of a germanium-containing layer and a germanium layer to a back of a silicon wafer at a point at which or in whose surroundings an etching procedure is to be completed (page. 104, section B, first paragraph); detecting at least one of germanium and germanium compounds during the etching procedure (page 104, column 2, lines 11-17); and controlling the etching procedure as a function of the detection (page 105, section IV).

As to claim 10, Tillack further teaches the controlling includes interrupting the etching procedure (page 105, section IV).

As to claim 11, Tillack further teaches at least one of the germanium and germanium-containing layer is buried in a layered structure (page 102, Part A, first sentence).

As to claim 15, Tillack further teaches the at least one of germanium and germanium compounds is detected using one of optical emission spectroscopy and mass spectroscopy (page 103, first column, last paragraph of Part B).

4. Claims 16 and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by ***Bashir et al. (US 5,888,845)***.

As to claims 16 and 17, Bashir teaches a diaphragm sensor unit (see abstract) comprising: a substrate (200, Fig. 2) made of one of silicon and a layered silicon/insulator structure (col. 3:6-10); and a flat diaphragm (diaphragm 210, Fig. 13) containing germanium (col. 3:52-56) for implementing a sensor element structure for a sensor, wherein at least one of a germanium and germanium-containing layer is simultaneously used as a component functional layer (the diaphragm is a functional component, col. 4:11-13, and is even cited as an example of a functional component by Applicant, p. 4, 2nd para. Of instant application) and is situated in the layered structure (Fig. 4, the substrate 200, the oxide 204, and the diaphragm 210 are layered).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over ***Tillack*** in view of ***Partridge et al. (US 2004/0245586)***.

As to claim 13, Tillack teaches all the limitations of claim 9 but does not explicitly teach removing at least one of the germanium and germanium-containing layer after completion of an etching procedure up to at least one of the germanium and germanium-containing layer. Tillack teaches a method for non-invasively monitoring the etching process but is silent on what the next step is after etching. Partridge teaches removing at least one of the germanium and germanium-containing layer after completion of an etching procedure up to at least one of the germanium and germanium-containing layer (page 1, [0058], Fig. 6C-6E).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use the etching procedure of Tillack in the MEMS device fabrication process of Partridge so as to have a more sensitive and accurate indicator of when to stop etching (Tillack, page 105, Part IV, second to last sentence).

As to claim 14, Tillack teaches all the limitations of claim 9 but does not explicitly teach at least one of the germanium and germanium-containing layer is simultaneously used as a component functional layer. However, Partridge does teach at least one of the germanium and germanium-containing layer is simultaneously used as a component functional layer (page 1, [0058], Fig. 6C-6E, layer 32 contains mechanical elements 20a-d).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use the germanium-containing layer of Tillack as a component functional layer as taught by Partridge so as to make a MEMS device.

7. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over *Bashir* in view of *Shimada et al. (US 4/986,127)*.

As to claim 18, Bashir teaches all the limitations of claim 16 but does not explicitly teach the flat diaphragm is made entirely of germanium. However, Bashir does teach that altering the content of germanium permits customization of the diaphragm's responsivity properties (col. 4:11-17) and Shimada teaches a flat diaphragm made entirely of germanium (col. 10:18-23). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to make the diaphragm entirely of germanium as taught by Shimada so as to customize the diaphragm's responsivity properties to meet product and customer specifications.

Response to Arguments

8. Applicant's arguments with respect to claims 16-18 have been considered but are moot in view of the new ground(s) of rejection.
9. Applicant's arguments with respect to claims 9-11 and 13-15 have been fully considered but they are not persuasive. Applicant argues that the structure of Tillack contains germanium added to the top or the middle of the structure, not to the back of the structure. Examiner respectfully disagrees. Tillack teaches selectively etching a Si layer on SiGe or vice versa (p. 1, part I., lines 26-28), which implies the Si layer can be on top of the SiGe layer. Tillack also teaches SiGe on at least one end of the layered stack (p. 1, part II., lines 1-4). Examiner respectfully asserts that "back" and "top" and "middle" are all relative terms. The back of the substrate, as claimed in current claim 9, can be the "top" SiGe layer of Tillack. Applicant does not state to what "back" is in reference, nor does Applicant specifically define "back" or "front" in any positively definitive way. Thus, Examiner humbly believes to be interpreting the claim in the broadest reasonable sense and must maintain the current rejection.

Conclusion

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

11. Any response to this Office Action should be faxed to (571) 273-8300 or mailed to:

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Hand-Delivered responses should be brought to:

Customer Service Window
Randolph Building
401 Dulany Street
Alexandria, VA 22313

Any inquiry concerning this communication or earlier communications from the examiner should be directed to KAREN M. KUSUMAKAR whose telephone number is (571) 270-3520. The examiner can normally be reached on Mon - Thurs 7:30a - 5:00p EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ha Nguyen can be reached on 571-272-1678. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/K. M. K./
Examiner, Art Unit 2829
7/6/2009
/Michael S. Lebentritt/
Primary Examiner, Art Unit 2829